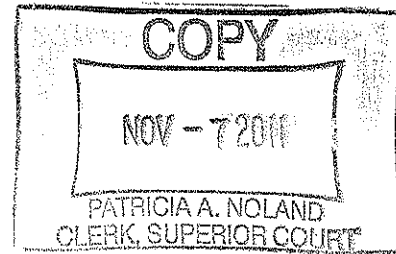


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9 IN THE SUPERIOR COURT STATE OF ARIZONA
10 IN AND FOR THE COUNTY OF PIMA

C20117839

11 State of Arizona, ex rel. Thomas C. Horne,
12 Attorney General,

Case No. _____

13 Plaintiff

COMPLAINT FOR INJUNCTIVE AND
OTHER RELIEF

14 vs.

(Unclassified Civil)

15 MORTGAGE CAPITAL USA, INC., a Nevada
16 Corporation; GUSTAVE R. ANAYA a.k.a
17 GUSTAVO R. ANAYA and OLIVIA ANAYA,
residents of the state of Nevada, individually
18 and as a marital community, and d.b.a THE
OFFICES OF GUSTAVO ANAYA, a Nevada Sole
19 Proprietorship; EXECUTIVE CAPITALS, INC., a
Nevada Corporation; AMERICAN MORTGAGE
20 USA, INC., an Arizona Corporation; ABC
21 CORPORATIONS One Through Ten; and XYZ
22 LIMITED LIABILITY COMPANIES One Through
Ten;

Hon. KYLE A. BRYSON

23
24 Defendants.

25 Plaintiff State of Arizona *ex rel.* Thomas C. Horne, Attorney General ("the
26 State"), by and through its counsel undersigned, brings this action pursuant to the
27 Arizona Consumer Fraud Act, A.R.S. § 44-1521 *et. seq.*, to obtain injunctive relief, civil
28 penalties, attorney's fees and costs, investigative expenses and other relief to prevent the

1 unlawful acts and practices alleged in the Complaint and to remedy the consequences of
2 such unlawful practices. The State alleges as follows:

3 INTRODUCTION

4 This case centers on a home loan modification scheme involving multiple
5 business entities and persons all controlled by Gustavo Anaya. The goal of the scheme
6 is to take money from already distressed homeowners in need of foreclosure consultant
7 or loan modification services and then fail to deliver those services or otherwise earn
8 that money; each Defendant acts in concert in the common scheme to achieve this goal.
9 To gain the consumers' confidence Defendants often falsely hold themselves out as
10 being, or employing, attorneys who will work to stop a foreclosure or obtain a loan
11 modification for consumers.

12 Gustavo Anaya uses each individual business name interchangeably, but the
13 pattern is clear and consistent: get the money, let the foreclosure fuse burn while the
14 consumer remains isolated and unaware, and when the worst happens for the consumer,
15 blame the loan servicer or the consumer's own lack of compliance with the terms of the
16 agreement. If all goes well for Gustavo Anaya, the consumer will quietly walk away
17 without complaining or at least be unaware of which particular Defendant is responsible
18 for any malfeasance.

19 JURISDICTION AND VENUE

- 20 1. Venue is proper in Pima County, Arizona pursuant to A.R.S § 12-401.
21 2. The Superior Court has jurisdiction to enter appropriate orders both prior
22 to and following a determination of liability pursuant to A.R.S. § 44-1528.
23

24 PARTIES

- 25 3. Plaintiff is the State of Arizona, *ex. rel.* Thomas C. Horne, the Attorney
26 General of Arizona ("the State") who is authorized to bring this action under the
27 Consumer Fraud Act A.R.S. § 44-1521 *et. seq.* ("the Act").
28

1 4. Defendant Mortgage Capital USA, Inc. (hereinafter "Mortgage Capital")
2 is a Nevada corporation doing business in the State of Arizona as a foreign corporation.

3 5. Defendant Mortgage Capital has its principal place of business in the State
4 of Nevada located at 3430 E. Flamingo Road, Suite #104A, Las Vegas, Nevada 89121.

5 6. Defendant Mortgage Capital has storefront businesses in the State of
6 Arizona located at 1802 East Thomas Road, Suite #8, Phoenix, Arizona 85016, and at
7 5433 South 12th Avenue Suite #2, Tucson, Arizona 85706.

8 7. Defendant Executive Capitals, Inc. (hereinafter "Executive Capitals") is a
9 Nevada corporation with its principal place of business located at 3430 East Flamingo
10 Road, Suite #104, Las Vegas, Nevada 89121.

11 8. Executive Capitals functions out of the same storefronts as Mortgage
12 Capital in the State of Arizona located at 1802 East Thomas Road, Suite #8, Phoenix,
13 Arizona 85016, and at 5433 South 12th Avenue Suite #2, Tucson, Arizona 85706.

14 9. Defendant American Mortgage USA, Inc. (hereinafter "American
15 Mortgage") is an Arizona corporation with its principal place of business located at
16 1802 East Thomas Road, Suite #8, Phoenix, Arizona 85016. At all times relevant to
17 this action, Defendant Olivia Anaya is the sole officer and incorporator of American
18 Mortgage.

19 10. Defendant The Offices of Gustavo Anaya, a Nevada sole proprietorship
20 belonging to Defendant Gustave R. Anaya, has its principal place of business located at
21 3430 East Flamingo Road, Suite #104, Las Vegas, Nevada 89121.

22 11. Defendant Gustave R. Anaya, also known as Gustavo R. Anaya,
23 (hereinafter "Gustavo Anaya") a Nevada resident, is the sole officer of Defendant
24 Mortgage Capital and Defendant Executive Capitals.

25 12. Defendant Olivia Anaya, (hereinafter "Olivia Anaya") is a Nevada
26 resident and the wife of Gustavo Anaya.
27
28

1 13. Gustavo Anaya's and Olivia Anaya's actions alleged herein were taken in
2 furtherance of their marital community.

3 14. ABC Corporations one through ten and XYZ Limited Liability
4 Companies are companies whose identities are currently unknown, who participated in
5 the acts alleged herein, or who engaged in other unlawful conduct in connection with
6 Defendant's business. Plaintiff may amend this complaint to join additional Defendants
7 as their identities become known.

8 **THE MORTGAGE CAPITAL, EXECUTIVE CAPITALS, AMERICAN**
9 **MORTGAGE, AND GUSTAVO ANAYA CONNECTION**

10 15. The State hereby re-alleges paragraphs one through fourteen as if set forth
11 in full herein.

12 16. Defendant Anaya is the sole officer and incorporator of Defendants
13 Mortgage Capital and Executive Capitals.

14 17. Certain contract forms that Mortgage Capital entered into with consumers
15 also listed Executive Capitals as a party to the contract, including as a payee for services
16 rendered.

17 18. Both Mortgage Capital and Executive Capitals shared a principal place of
18 business located at 3430 E. Flamingo Road, Suite #104A, Las Vegas, Nevada 89121.

19 19. Since 2010, many of the contracts issued to consumers by Defendants
20 contained provisions with respect to Executive Capitals stating for example, but without
21 limitation, that:
22

- 23 a. "Client will claim promptly any certified mail received in connection
24 with his/her mortgage and/or foreclosure and forward to Executive
25 Capitals Inc."
26
27
28

1 b. The address to which the consumer was to forward this information to
2 Executive Capitals, however, was Mortgage Capital's/Gustavo
3 Anaya's Las Vegas address and phone number.

4 c. If the consumers communicated with their lenders, Executive Capitals
5 Inc., would not be held responsible for the outcome of the case.

6 20. Still other documents, issued by Defendants with documents bearing the
7 names Mortgage Capital and Executive Capitals, purported that the consumer was
8 engaging "Gustavo Anaya," or "the Offices of Gustavo Anaya,"¹ either in conjunction
9 with one of the other names under which Defendants operated or listed on its own.

10 21. The information American Mortgage filed with the Arizona Corporation
11 Commission represented that its contact information was identical to Mortgage
12 Capital's Phoenix address of 1802 East Thomas Road, Suite #8, Phoenix, Arizona
13 85016;

14 22. Arizona Corporation Commission documents also reflected that American
15 Mortgage's phone number was identical to Mortgage Capital's Nevada phone number
16 (702) 362-5061.

17 23. When consumers called the phone number listed in American Mortgage's
18 advertising, the individual answering the phone asked, "Offices of Gustavo Anaya, how
19 may I help you?"

20 24. Jose L. entered into a contract with Defendants in April of 2011.

21 a. Defendants gave Jose L. a notice of Jose L.'s rights to any surplus
22 funds generated from a potential foreclosure sale that listed Executive
23 Capitals as the company providing services to Jose L.
24

25
26

¹ Some documents list "Oficina de Gustavo Anaya" instead of the English translation "the
27 Offices of Gustavo Anaya." Hereinafter the State will use the English translation to refer to the
28 Offices of Gustavo Anaya.

- 1 b. Defendants instructed Jose L. to make checks payable to Mortgage
2 Capital.
- 3 25. Joe M. entered into a contract with Defendants in June of 2010.
- 4 a. Joe M. made an initial payment to Executive Capitals to obtain
5 foreclosure consultant services.
- 6 b. Joe M. followed Defendants' instruction to make post-dated checks
7 payable to Mortgage Capital, and received a receipt for the post-dated
8 checks in the name Mortgage Capital.
- 9 c. Defendants gave Joe M. a notice of Required Documents listing The
10 Offices of Gustavo Anaya as the company with whom Joe M. was
11 working, but the contract listed only Mortgage Capital and Executive
12 Capitals as parties to the agreement.
- 13 26. Arturo R. entered into a contract with Defendants in April of 2011.
- 14 a. Arturo R. called a number listed on an American Mortgage television
15 advertisement and a receptionist greeted him by saying, "Mr. Anaya's
16 Office."
- 17 b. Defendants instructed Arturo R. to make checks payable to Mortgage
18 Capital, but upon receiving a refund of those fees, Defendants drafted
19 a release of liability stating that Arturo R. would hold only Gustavo
20 Anaya harmless of any damages.
- 21 27. Leticia T. entered into a contract with Defendants in October of 2010.
- 22 a. Leticia T. received a business card from Defendants listing Mortgage
23 Capital and Gustavo Anaya, yet the contract Defendants drafted for her
24 to sign included Mortgage Capital and Executive Capitals.
- 25 b. Defendants instructed Leticia T. to make checks payable to Mortgage
26 Capital for services rendered under the contract.
27
28

1 c. Upon receiving a refund of those fees, Defendants drafted a release of
2 liability stating that Leticia T. would hold Gustavo Anaya and
3 American Mortgage harmless of any damages; Defendants sent the
4 release and its cover letter using the name of "The Offices of Gustavo
5 Anaya."

6 28. Whether Defendants held themselves out as Executive Capitals, American
7 Mortgage, or the Offices of Gustavo Anaya, consumers made their fees payable to
8 Mortgage Capital.²

9 29. Whether Defendants held themselves out as Executive Capitals, American
10 Mortgage, or the Offices of Gustavo Anaya, when consumers paid fees for services
11 under the contract, Mortgage Capital almost always issued a receipt for payment
12 bearing Mortgage Capital's name and Las Vegas address.

13 30. Mortgage Capital and/or Gustavo Anaya responded to consumer
14 complaints lodged against Executive Capitals, the Offices of Gustavo Anaya, and
15 American Mortgage.

16 31. Whether Defendants held themselves out as Executive Capitals, American
17 Mortgage, or the Offices of Gustavo Anaya, almost all consumers who received
18 refunds, received them from an account bearing the name of Mortgage Capital or The
19 Law Offices of John W. Blischak as counsel for Mortgage Capital.³

20 32. When Defendant American Mortgage issued a refund, Defendants asked
21 consumers to sign a waiver releasing "Gustavo Anaya" individually or "Gustavo Anaya
22 and American Mortgage USA" of any liability arising from the transaction.
23
24

25 ² Two complaints reviewed by this office indicated that consumers made an initial payment to
26 Executive Capitals, but made subsequent payments to Mortgage Capital USA, Inc.

27 ³ On one occasion, a refund check dated August 10, 2011, purported to be from "Desert State
28 L.L.C.". Please see the discussion regarding Desert State Mortgage L.L.C. *infra* at ¶¶ 34 - 48.

1 33. One consumer expressed the following regarding the true identity of
2 Defendants: "On TV they show American Mortgage[.] [W]hen you call they answer as
3 Mr. Anaya['s] Office. The business office provides [a] card that shows Desert State
4 Mortgage Loan Modifications – Law Offices of Jhon Blischak [(sic)]. Then when you
5 pay them you paid [(sic)] Mortgage Capital USA."

6 **THE DESERT STATE MORTGAGE L.L.C CONNECTION**

7 34. The State hereby re-alleges paragraphs one through thirty-three as if set
8 forth in full herein.

9 35. Desert State Mortgage, L.L.C, (hereinafter "DSM") is an Arizona L.L.C
10 incorporated in March of 2006, and holds a mortgage broker's license issued in January
11 of 2007 by the Arizona Department of Financial Institutions.

12 36. Raul Harris is the sole member/manager of DSM.

13 37. According to DSM, DSM never engaged in loan modification activities on
14 behalf of Defendants and never authorized Defendants to use DSM's name on any of
15 Defendants' contracts, documents, advertisements, or signage associated with Mortgage
16 Capital's business.

17 38. Nonetheless since 2010, Defendants falsely published: business cards,
18 signage, consumer contracts, administrative forms, third-party authorization forms sent
19 to banks, payment schedules, cancellation notices, disclosure forms, and refunds to
20 consumers using the assumed name of "Desert State Mortgage."⁴

21 39. Since 2010 and in the conduct of Defendants' business, while holding
22 themselves out as "Desert State Mortgage," Defendants represented that DSM's
23 geographical origin was at 1802 E. Thomas, Suite 8, Phoenix, Arizona 85016 or other
24 addresses where Defendants conducted their business.

25
26
27 ⁴ In some cases Defendants have distributed materials purporting to be from, "Desertt State
28 Mortgage," (sic).

1 40. The Arizona Department of Financial Institutions and the Arizona
2 Secretary of State listed DSM's actual geographical origin at 4501 E. 22nd, Suite 270,
3 Phoenix, Arizona 85016.

4 41. In a letter dated January 25, 2011, and copied to DSM, John W. Blischak,
5 serving as counsel for Gustavo Anaya and Mortgage Capital, informed Gustavo Anaya
6 and Mortgage Capital in writing that any use of the name "Desert State Mortgage," on
7 any of their letterhead or captions was not authorized and was prohibited.

8 42. In the same letter, John W. Blischak further admonished his clients,
9 Gustavo Anaya and Mortgage Capital that, "[t]he public must be fully aware that Raul
10 Harris and/or myself are not in any way doing loan modifications."

11 43. On July 1, 2011, due to Defendants' continued unauthorized
12 representations to consumers that they were doing business as DSM, DSM sent a cease
13 and desist letter claiming that, "Neither Mr. [Raul] Harris, nor his company have
14 authorized [Defendants] to use his name in conducting any business, particularly with
15 regard to processing loan modifications."

16 44. Despite these warnings to cease falsely conducting business as DSM
17 and/or representing that Defendants are DSM, Defendants continued to use DSM's
18 name in connection with Defendants' foreclosure consultant and loan modification
19 business.

20 45. Despite Defendants holding themselves out as DSM, almost all consumers
21 made their fees payable to Mortgage Capital.

22 46. Despite Defendants holding themselves out as DSM, Mortgage Capital
23 issued the receipt for payment bearing Mortgage Capital's name and Las Vegas address.

24 47. Despite Defendants holding themselves out as DSM, almost all consumers
25 who received a refund received them from an account bearing the name of Mortgage
26 Capital or The Law Offices of John W. Blischak on behalf of Mortgage Capital.
27
28

1 48. On one occasion, Defendants issued a refund check and cover letter dated
2 August 10, 2011, that purported to be from "Desert State L.L.C.," but it was signed by
3 Gustavo Anaya, contained a routing number leading back to a bank located in Las
4 Vegas, and contained Gustavo Anaya's Las Vegas address.

5 **THE JOHN W. BLISCHAK, ESQ. CONNECTION**

6 49. The State hereby re-alleges paragraphs one through forty-eight as if set
7 forth in full herein.

8 50. Until late August or early September 2011, Defendant Mortgage Capital
9 retained the legal services of the Law Offices of John W. Blischak for the sole purpose
10 of obtaining legal advice and representation for Mortgage Capital regarding any legal
11 issues or complaints filed against Mortgage Capital in Arizona.

12 51. According to John W. Blischak, at no time during the course of John
13 Blischak's representation of Mortgage Capital was his office ever engaged in
14 performing foreclosure consultant services or loan modifications for Mortgage Capital
15 consumers.

16 52. According to John W. Blischak, at all times pertinent hereto, John W.
17 Blischak, Esq. did not represent Mortgage Capital consumers on behalf of Mortgage
18 Capital if the consumers' loan modification was denied.

19 53. Nonetheless, Defendants falsely published: advertising, business cards,
20 consumer contracts, administrative forms, third party authorization forms sent to banks,
21 payment schedules, cancellation notices, disclosure forms, refund policy statements, and
22 refunds to consumers using the assumed name of either, "The Law Offices of John
23 Blischak," and/or "John Blischak of Counsel."⁵
24

25
26
27 ⁵ In some cases, Defendants have distributed materials purporting to be from the "law Ooffices
28 Jhon Blischak," (sic) and other variations of "The Law Offices of John Blischak."

1 54. In the conduct of Defendants' business, while deceptively holding
2 themselves out as "The Law Offices of John Blischak," Defendants represented that The
3 Law Offices of John Blischak's geographical origin was, and is, at 1802 E. Thomas,
4 Suite 8, Phoenix, Arizona 85016.

5 55. According to John W. Blischak, The Law Offices of John W. Blischak
6 were, and are, located at 1100 E. Washington, Suite 200, Phoenix, Arizona 85034-1090.

7 56. On January 25, 2011, John W. Blischak Esq. sent a letter to his clients
8 Gustavo Anaya, Mortgage Capital and sent a copy to DSM, which stated the following:

- 9 a. "You must immediately destroy any and all paperwork reflecting my
10 name with any address in Las Vegas or on East Thomas Road in
11 Phoenix."
12 b. "Likewise, you have agreed that your future paperwork will not in any
13 way reflect my name and/or Raul Harris [of DSM] in any way with
14 your company on the letterhead caption."
15 c. "My role is limited to representing you and/or your company in any
16 complaints that may arise with customers."
17 d. "Most importantly, a letter with a contract addendum needs to be sent
18 to all present and past customers from Arizona that have my name as
19 the responsible party. I had no idea that was being done and I cannot
20 be responsible for the same."
21 e. "You have also advised me that my name and office is no longer listed
22 in any television advertising."
23

24 57. Despite these warnings to cease conducting business and/or representing
25 that Defendants were operating as the "Law Offices of John Blischak," or "John
26 Blischak of Counsel," Defendants continued, without authorization, to use the name of
27
28

1 John W. Blischak and his law offices with respect to Defendants' foreclosure consultant
2 and loan modification activities.

3 58. Despite Defendants holding themselves out as The Law Offices of John
4 W. Blischak, consumers made their fees payable to Mortgage Capital.

5 59. Despite Defendants holding themselves out as The Law Offices of John
6 W. Blischak, Mortgage Capital issued a receipt for payment bearing Mortgage Capital's
7 name and Las Vegas address.

8 60. Despite Defendants holding themselves out as The Law Offices of John
9 Blischak, almost all consumers who received refunds, received them from an account
10 bearing the name of Mortgage Capital or "The Law Offices of John Blischak" on behalf
11 of Mortgage Capital.

12 ALLEGATIONS

13 61. The State hereby re-alleges paragraphs one through sixty as if set forth in
14 full herein.

15 62. Since at least April of 2010 and onward, Defendants represented that they
16 acted on behalf of, and for the benefit of, consumers to perform foreclosure consultant
17 and loan modification services, including but not limited to:

- 18 a. Contacting a creditor on behalf of a borrower;
- 19 b. Arranging or attempting to arrange an extension of the period within
20 which a homeowner may cure the homeowner's default and reinstate
21 the homeowner's obligation pursuant to a note, mortgage or deed of
22 trust;
- 23 c. Arranging or attempting to arrange delay or postponement of the time
24 of a foreclosure sale;
- 25 d. Giving advice, explanation or instruction to a homeowner that relates
26 to the cure of a default in or the reinstatement of an obligation secured
27
28

1 by a mortgage or other lien on the residence in foreclosure, to the full
2 satisfaction of the obligation or to the postponement or avoidance of a
3 foreclosure sale.

4 63. As the sole officer of Defendants Mortgage Capital and Executive
5 Capitals, Gustavo Anaya, with actual and/or constructive knowledge, approved,
6 endorsed, directed, ratified, controlled or otherwise participated in the illegal acts and
7 practices alleged herein.

8 64. As the sole officer and incorporator of American Mortgage Olivia Anaya,
9 with actual and/or constructive knowledge, approved, endorsed, directed, ratified,
10 controlled or otherwise participated in the illegal acts and practices alleged herein.

11 65. With respect to American Mortgage, Gustavo Anaya, with actual and/or
12 constructive knowledge, approved, endorsed, directed, ratified, controlled or otherwise
13 participated in the illegal acts and practices alleged herein.

14 66. Defendants charged consumers total fees ranging from \$500.00 to
15 \$3,500.00 for their foreclosure consultant and loan modification services, all or a
16 portion of which were usually paid by the consumer up-front. For example, but without
17 limitation:

- 18 a. In a contract dated November 8, 2010, Defendants arranged to charge
19 Teresa A. \$3,500 for their services over four installments paid via
20 post-dated checks;
- 21 b. In a contract dated January 8, 2011, Defendants arranged to charge
22 Ricardo G. \$2,980 for their services with one payment due upon
23 signing the contract and one post-dated check.
- 24 c. In a contract dated August 29, 2010, Defendants arranged to charge
25 Raul H. \$3,500 for their services over five installments paid via post-
26 dated checks.
27
28

1 d. In a contract dated July 2, 2010, Defendants arranged to charge Hector
2 I. \$2,500 for their services with an immediate down payment of \$1,280
3 and another \$1,220 to be paid within twenty-one days.

4 67. Defendants contract packet had a document titled "Working Agreement
5 Instructions," which almost always stated, "Please Note: a deposit is due before we start
6 your case."

7 68. Defendants' payment schedules, used since at least April 2010, further
8 showed that Defendants cashed post-dated checks issued by the consumer on a given
9 date regardless of what work had or had not been accomplished on the consumers'
10 behalf.

11 69. In the conduct of Defendants' business, Defendants handed out business
12 cards that represented their Tucson address as 3433 S. 12th Ave. #2, Tucson, Arizona
13 85700 – where there was no such business – while contracts that bore a Tucson address
14 correctly stated that the location of Defendants' business in Tucson was actually 5433 S.
15 12th Ave., #2 Tucson, Arizona 85706.

16 70. Many of Defendants' advertisements targeted Spanish-speaking
17 populations in the State of Arizona via radio and television advertising.

18 71. Many of Defendants' clients did not read or speak English proficiently, if
19 at all.

20 72. Defendants provided contractual agreements written in English.⁶

21 73. Defendants verbally asserted one set of guarantees, advice or
22 circumstances in Spanish that were in direct contradiction to the assertions made in
23

24
25 _____
26 ⁶ Defendants occasionally provided the following documents in Spanish: (i) Welcome Letter;
27 (ii) Payment Schedule; (iii) Invoices or Demands for Payment; (iv) Required Documents
28 Notification; (v) Modification Time Frames; and (vi) Refund Policy Statements. But, the
"Working Agreement" which binds the parties was in the English language.

1 Defendants' contracts written in English. Consumers reported the following, which
2 illustrates this conduct:

- 3 a. Defendants verbally and routinely advised consumers in Spanish to
4 cease paying their monthly mortgage payment while Defendants'
5 written contract, called the "Working Agreement," sometimes advised
6 the consumer in English of the need to keep paying their mortgage.⁷
- 7 b. Defendants verbally and routinely guaranteed consumers specific
8 results from the negotiation process in Spanish while Defendants'
9 Working Agreement, written in English, disclaimed any guarantee or
10 promise of a specific result.⁸
- 11 c. Defendants verbally represented in Spanish to consumers that the
12 consumers were retaining legal counsel by engaging the Defendants'
13 services while the Working Agreement, written in English, disclaimed
14 any intent to provide or recommend legal advice.

15 74. When consumers spoke with Defendants, Defendants reassured them that
16 Defendants would act on the consumers' behalf and in their best interest to successfully
17 obtain a loan modification.

18 75. Contrary to Defendants' assertions that they were acting on behalf of, and
19 in the best interest of, consumers, Defendants willfully advised consumers to take
20 courses of conduct that Defendants knew or should have known would put consumers at
21 a greater risk of adverse consequences, including foreclosure and lowered credit rating.
22 For example, but without limitation:

25 ⁷ One consumer expressed that Mortgage Capital explicitly stated that not paying his monthly
26 mortgage payment could adversely affect the consumer's credit rating.

27 ⁸ In one instance a consumer reported that he was verbally and affirmatively informed that the
28 Defendants could not promise a specific result.

- a. Defendants routinely advised consumers verbally, in Spanish, that they should stop paying their monthly mortgage payments in order to become delinquent.
- b. When consumers ceased paying their monthly mortgage payment, they were put at a greater risk of foreclosure and at greater risk of a degraded credit rating.
- c. Defendants' contracts made it a breach of contract for the consumers to communicate with their respective loan servicer; under the contract any such breach subjected the consumer to a forfeiture of a portion, or all, of the up-front fees they paid to the Defendants.
- d. Defendants verbally, in Spanish, advised their clients not to have any contact or communication with their loan servicer.
- e. When consumers ceased communications with loan servicers who sought to work out a loss mitigation solution for the consumers' inability to pay their monthly mortgage payment, consumers were put at a greater risk of foreclosure.

76. Defendants promised or guaranteed consumers that Defendants could obtain certain outcomes. For example, but without limitation:

- a. Defendants verbally promised some consumers in Spanish that they would save the consumers' property from foreclosure.
- b. Defendants verbally promised many consumers in Spanish that they would obtain a loan modification with a lower monthly payment.
- c. Defendants verbally promised some consumers in Spanish that they would consolidate various financial obligations regarding the consumers' property into one lower monthly payment.

77. Defendants sometimes did not achieve the results they promised.

1 78. Defendants engaged in conduct that deceptively led consumers to believe
2 that the consumers were retaining legal counsel from, and legal representation by,
3 Defendants.

4 79. Defendants met with consumers who affirmatively expressed that they
5 wished to hire an attorney, to which Defendants verbally conveyed in Spanish that their
6 business offered such services.

7 80. Contrary to Defendants' deceptive assertions, Defendants were, and are,
8 not a law firm that may represent the legal interests of any party.

9 81. According to John W. Blischak, neither was John W. Blischak Esq.
10 engaged in the practice of foreclosure consultant and loan modification services on
11 behalf of Defendants.

12 82. By broadly advertising their services and entering into contracts to
13 provide foreclosure consultant and loan modification services, Defendants directly
14 and/or indirectly conveyed to consumers that they had the proper authority to do so
15 through compliance with State and Federal law.

16 83. In fact, Defendants did not, and do not, have proper authority or licensure
17 as loan originators pursuant to A.R.S. § 6-991 *et. seq.* to enter into such transactions.

18 84. Defendants did not notify consumers that the collection of up-front fees
19 for foreclosure consultant and loan modification services was prohibited by state and
20 federal law before collecting up-front fees from consumers.

21 85. Contrary to Defendants' direct and/or indirect representation to consumers
22 that Defendants were compliant with state law, it was Defendants' business practice to
23 charge up-front fees in violation of A.R.S. § 44-1378 *et. seq.*

24 86. Contrary to Defendants' direct and/or indirect representation to consumers
25 that Defendants were compliant with federal law, it was Defendants' business practice
26
27
28

1 to charge up-front fees in violation of the Federal Trade Commission's Mortgage
2 Assistance Relief Services Rule 16 C.F.R § 322.1 *et. seq.*

3 87. Consumers reported that after paying Defendants a down payment and
4 issuing Defendants a number of post-dated checks, Defendants became virtually
5 unreachable for information regarding the status of their loan negotiations; Defendants
6 failed to answer the telephone or return phone calls from consumers.

7 88. Due to Defendants' lack of communication regarding consumers' home
8 loans, some consumers contacted their servicer and learned that Defendants had either
9 not made contact with the servicer or had only engaged in a negligible amount of
10 communication with the servicer.

11 89. The events alleged herein regarding Gustavo Anaya, Mortgage Capital,
12 and Executive Capitals occurred, and have continued to occur, since 2010.

13 90. The events alleged herein regarding American Mortgage occurred, and
14 have continued to occur, since January 2011.

15 **COUNT I**

16 **VIOLATION OF A.R.S § 44-1521 *et. seq.*: ARIZONA'S CONSUMER FRAUD**

17 **ACT**

18
19 91. The State hereby re-alleges paragraphs one through ninety as if set forth in
20 full herein.

21 92. Defendants engaged in the use of deception, deceptive acts or practices,
22 fraud, false pretense, false promise, misrepresentation, or concealment, suppression or
23 omission of any material fact with intent that others rely upon such concealment,
24 suppression or omission, in connection with Defendants' advertisement, sale or delivery
25
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1 of services in violation of A.R.S. § 44-1522(A).⁹ These acts included, but are not
2 limited to the acts described below.

3 93. Defendants misrepresented the true identity of the business with whom
4 Arizona consumers believed they were working.

5 94. Defendants willfully targeted the Spanish-speaking community in Arizona
6 and obtained a benefit through the exploitation of the consumers' Spanish/English
7 language barrier.

8 95. Defendants deceptively and willfully held themselves out as acting on
9 behalf of, and for the benefit of, the Consumer while at the same time Defendants
10 willfully advised the consumer to take actions adverse to the consumer's own interests.

11 96. Defendants deceptively and willfully promised or guaranteed consumers a
12 satisfactory outcome or a specific result to the foreclosure prevention and/or loan
13 modification efforts and failed to deliver on those guarantees or promises.

14 97. Defendants deceptively and willfully misrepresented themselves as Desert
15 State Mortgage.

16 98. Defendants deceptively and willfully misrepresented themselves as The
17 Law Offices of John W. Blischak.

18 99. Defendants deceptively and willfully misrepresented that consumers were
19 entering into an attorney/client relationship with Defendants.

20 100. Defendants deceptively and willfully misrepresented that they were
21 authorized to transact foreclosure consultant and loan modification services when they
22 were not so authorized.
23

24
25 ⁹ A violation of the Consumer Fraud Act means, "[t]he act, use or employment by any person
26 of any deception, deceptive act or practice, fraud, false pretense, false promise,
27 misrepresentation, or concealment, suppression or omission of any material fact with intent that
28 others rely upon such concealment, suppression or omission, in connection with the sale or
advertisement of any merchandise whether or not any person has in fact been misled, deceived
or damaged thereby, is declared to be an unlawful practice." *A.R.S. §44-1522(A)*.

101. Defendants deceptively and willfully represented that they were compliant with state and federal laws when they were not compliant with state and federal laws.

102. Defendants deceptively and willfully failed to disclose to consumers that there was a state and federal prohibition on charging up-front fees for foreclosure consultant services before so charging consumers.

103. Defendants deceptively and willfully represented that they were actively working on a consumer's account when they were not actively working on the account or had only performed a negligible amount of work.

104. With regard to the foregoing violations, Defendants knew or should have known that the above acts and practices violated the Consumer Fraud Act, and those violations were, therefore, willful within the meaning of A.R.S. § 44-1531(A)¹⁰

COUNT II

VIOLATION OF A.R.S § 44-1378 et. seq.: ARIZONA'S FORECLOSURE

CONSULTANT STATUTE

105. The State hereby re-alleges paragraphs one through one hundred four as if set forth in full herein.

106. The Defendants routinely violated the Arizona Foreclosure Consultant Statute at A.R.S. § 44-1378.02 by engaging in the following conduct:

- a. Defendants claimed, demanded, charged, collected or received compensation from consumers before the Defendants had fully performed each covered service that the Defendants contracted to perform or represented that the Defendants would perform. Indeed, Defendants often charged an up-front deposit/fee before starting any

¹⁰ "[A] willful violation occurs when the party committing the violation knew or should have known that his conduct was of the nature prohibited by §44-1522." A.R.S. §44-1531(B).

1 work on the case regardless of whether any provision in the contract
2 called for such a deposit.

3 b. Defendants' practice of charging of up-front fees, both, predated and
4 postdated the enactment of the Arizona Foreclosure Consultant Statute
5 in July of 2010.

6
7 107. A.R.S. § 44-1378.07(B) states the following:

8
9 An act or practice in violation of this article constitutes an
10 unlawful practice under § 44-1522. The attorney general
11 may investigate and take appropriate action as prescribed by
chapter 10, article 7 of this title.

12 **COUNT III**

13 **VIOLATION OF A.R.S. § 44-1221: GEOGRAPHICAL ORIGIN/LOCATION OF**
14 **BUSINESS MISREPRESENTATION**

15 108. The State hereby re-alleges paragraphs one through one hundred seven as
16 if set forth in full herein.

17
18 109. A.R.S. § 44-1221 states in pertinent part:

19 It is unlawful for a person to deceive another person by
20 misrepresenting the geographical origin or location of the
21 person's business in the conduct of the person's business.

22 110. The Defendants routinely violated A.R.S. § 44-1221, which regards the
23 deceptive use of names, by engage in the following conduct:

24 a. Defendants misrepresented the geographical origin of their Tucson
25 address in the conduct of Defendants' business.
26
27
28

1 b. Defendants misrepresented the geographical origin of their own
2 business and/or The Law Offices of John W. Blischak in the conduct
3 of Defendants' business.

4 c. Defendants misrepresented the geographical origin of their own
5 business and/or Desert State Mortgage's business in the conduct of
6 Defendants' business.

7 111. A.R.S. § 44-1378.07(B) states the following:

8
9 An act or practice in violation of this section is an unlawful
10 practice under § 44-1522 and subject to enforcement
11 through private action and prosecution by the attorney
12 general. The attorney general may investigate and take
13 appropriate action as prescribed by chapter 10, article 7 of
14 this title.

15 **PRAYER FOR RELIEF**

16 The State of Arizona respectfully requests that this honorable Court enter an
17 Order:

18 A. Issuing a permanent injunction prohibiting Defendants, their agents,
19 employees, and all other persons or entities, corporate or otherwise, in active concert or
20 participation with any of them, from violating A.R.S. § 44-1521 *et. seq.* or engaging in
21 the unlawful acts and practices alleged in the Complaint.

22 B. Issuing a permanent injunction prohibiting Defendants from operating
23 foreclosure prevention service entities or businesses, foreclosure consultant service
24 entities or businesses, and loan modification service entities or businesses in, into, or
25 from the State of Arizona.

26 C. Ordering Defendants to pay the State of Arizona a civil penalty of up to
27 \$10,000.00 for each violation of the Arizona Consumer Fraud Act, pursuant to A.R.S. §
28 44-1531.

1 D. Ordering Defendants to restore to all Arizona consumers any money and
2 property acquired by any unlawful means or practice alleged in the Complaint, as
3 deemed appropriate by the Court pursuant to A.R.S. § 44-1528.

4 E. Ordering Defendants to pay the State of Arizona its costs of investigation
5 and prosecution of this matter, including reasonable attorneys' fees, pursuant to A.R.S.
6 § 44-1534.

7 F. Granting such other and further relief as the Court deems just and proper.
8

9 DATED this 7th day of November, 2011.

10 THOMAS C. HORNE
11 ATTORNEY GENERAL

12 By 

13 Jeremy Shorbe
14 Assistant Attorney General
Attorney for Plaintiff

15 An original of the foregoing was filed this
16 7th day of November, 2011, with:

17 Honorable Kyle A. Bryson
18 Pima County Superior Court
110 West Congress
Tucson, Arizona 85701

19 Copy delivered via email and first class mail
20 this 7th day of November, 2011 to:

21 Scott Theobald, Esq.
22 3219 E. Camelback Road, #350
Phoenix, Arizona 85018
23 *Attorney for Defendants*
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25
26
27
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